

Participation of barrister in preliminary proceeding

Abstract (ENG)

The right of defense is one of the fundamental human rights and one of the most important rights connected with the right to judicial and other protection granted to each person by the Charter of fundamental rights and freedoms. The right of defense includes the right of everyone to defend himself, the right for proceeding of law enforcement authorities, which will ascertain the real situation without reasonable doubt and in particular the right to have and to consult with the barrister.

Pursuant to section 35 subsections 1 of the code of criminal procedure, only an attorney, who can be represented by a trainee for individual acts of criminal proceedings, may be the barrister in criminal proceedings. The code of criminal procedure presupposes that the person, which is prosecuted, chooses his or her barrister. In the event that the barrister is not chosen by the accused, although he must have him according to the law, the barrister will be appointed for the duration of the reasons for the necessary defense. Cases of necessary defense are laid down in section 36 of the code of criminal procedure. They are for example proceedings against and accused in custody or proceedings against a fugitive. Barrister's basic rights and obligations are laid down in section 41 of the code of criminal procedure. In addition the barrister, as an attorney, is obliged to proceed in accordance with the act on advocacy and the relevant professional regulations issued by the Czech bar association. The barrister is entitled to the costs of the proceedings after the defense, even if the accused is granted the right of defense free of charge. In such situation, the costs of defense are borne in whole or in part by the state.

As part of the preliminary proceedings, the defendant's defense can be divided into two phases, namely legal aid to the suspect before the initiation of criminal proceedings and the defendant's defense after the initiation of criminal proceedings. In the pre-prosecution procedure, the defense is limited to legal aid, the purpose of which is to prepare the defense tactics with the suspect and to prepare the suspect for giving an explanation. As part of the procedure after the initiation of criminal prosecution, the barrister has a number of means at his disposal, by means of which he performs the most effective defense of the accused. Such means may be, for example, participation in investigative measures, inspection of files, submission of motions, requests and appeals, or search for an evidence. With the help of these means, the barrister tries to acquit the accused, or at least mitigate his guilt.